

SENATE BILL REPORT

SB 5092

As Reported by Senate Committee On:
Health & Long-Term Care, February 10, 2011
Ways & Means, March 29, 2011

Title: An act relating to oversight of licensed or certified long-term care settings for vulnerable adults.

Brief Description: Concerning oversight of licensed or certified long-term care settings for vulnerable adults.

Sponsors: Senators Keiser and McAuliffe; by request of Department of Social and Health Services.

Brief History:

Committee Activity: Health & Long-Term Care: 1/19/11, 2/10/11 [DPS-WM, DNP].
Ways & Means: 2/23/11, 3/29/11 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5092 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Becker, Ranking Minority Member; Kline, Murray, Parlette, Pflug and Pridemore.

Minority Report: Do not pass.
Signed by Senator Carrell.

Staff: Rhoda Donkin (786-7465)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5092 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Brown, Conway, Fraser, Kastama, Keiser, Kohl-Welles, Pflug, Pridemore, Regala, Rockefeller and Tom.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senator Holmquist Newbry.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Hatfield, Honeyford and Schoesler.

Staff: Megan Atkinson (786-7446)

Background: Adult family homes are privately operated residential homes licensed to care for up to six residents under one roof. Individuals residing in these homes must be 18 years or older and are provided with all of the amenities of a home, but with the added services of care, supervision, and any assistance necessary to assure their health and safety. The population is mostly elderly and many have specialized needs such as dementia, developmental disabilities, and mental health issues.

The state first licensed adult family homes in 1989. At the time, 287 homes were located throughout the state. Since then the industry has grown to just over 2,900 homes in 2010. State policy has supported the growth of adult family homes as an alternative to placing people who need care in nursing facilities. In 1992 licensing fees were set at a rate that would encourage industry expansion: \$50 per home regardless of the number of beds. That rate was increased in 2009 to \$100 per home, plus a processing fee. In 2010, 255 applications were received by the Department of Social and Health Services (Department); 225 were approved. Over 43 percent of adult family home licensees have more than one home.

Approximately 60 percent of the residents in adult family homes pay for their care privately at an estimated average monthly rate of \$4,000 to \$5,000. The average monthly rate for Medicaid clients is approximately \$2,400. Today, the acuity level of Medicaid residents in adult family homes is similar to nursing homes. Many residents need continuous supervision, assistance with dressing, bathing, toileting, and medications.

Currently, adult family homes are inspected by the state at least every 18 months. According to the Department, between 2004-2009 the number of abuse and neglect complaints rose 45 percent.

In 2010 the Seattle Times reported serious deficiencies in a number of homes, which prompted Department to establish a work group to study issues of abuse and neglect in the industry. The work group agreed on a series of recommendations to address current deficiencies in data collection, reporting, investigation, training, and emergency response.

Summary of Bill (Recommended Second Substitute): It is the Legislature's intent to address statutes and funding levels limiting the state's ability to protect vulnerable adults. It is also the Legislature's intent that the cost of facility oversight should be supported by an appropriate license fee paid by the regulated businesses, rather than by the general taxpayers.

The Department is given more licensing discretion. The Department may require that applicants of adult family homes wait 24 months between applications for multiple licenses and have no enforcement actions taken against any previously licensed homes in that time

period; prove their ability to communicate in English; demonstrate financial solvency; complete 1000 hours of direct care giving experience in the previous three years; and finish 48 hours of classroom training in adult family home administration and business planning. The Department is directed to develop rules on the criteria for financial solvency.

New inspection standards shorten the annual inspection cycle of licensed homes from 18 months to 15 months. Sanctions for violating conditions of licensure include civil penalties of up to \$3,000 for each incident that violates licensing regulation, and each day that the violation continues. Civil penalties are authorized of up to \$10,000 for any current or former licensed provider operating an unlicensed home. If an operator of multiple homes has a serious issue of noncompliance, the Department must inspect the other homes of that provider and the cost of those inspections may be imposed on the provider up to \$300 per inspection.

The Department will specify in rule how monetary sanctions are applied and the criteria for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to health, safety, or welfare to residents. Prompt and specific enforcement remedies must be implemented without delay for providers who have shown these deficiencies.

A separate account is established in the custody of the State Treasurer to receive monies from civil penalties imposed under this chapter. The Department must use the money to improve the quality and care of residents in adult family homes.

All future homes must provide residents with sufficient space to accommodate all residents at one time in the dining and living areas, have hallways wide enough for mobility aids, and safe outdoor areas accessible for residents to use. All homes must provide access to common areas to the extent they are safe under the residents' care plans.

The provider or resident manager must assure there is a mechanism to communicate with the resident in his or her primary language either through a qualified person on site or readily available at all times, and have staff on site at all times capable of understanding and speaking English well enough to respond appropriately to emergency situations and understand resident care plans. No worker, paid or unpaid, with an uncompleted background check may have unsupervised access to residents.

A provider, resident manager, or qualified staff person must be present at the adult family home whenever residents are present.

Resident deposits amounting to \$100 or more paid to an adult family home must be placed in an interest-bearing account that is separate from any of the home's operating accounts. The act makes other restrictions and requires certain disclosures related to the handling of a resident's funds. Deceptive disclosures and unfair retention of deposits or prepaid charges by facilities will be construed as an unfair or deceptive act under the State's Consumer Protection Act.

Subject to funding - the state's long-term care ombudsman is directed to convene the adult family home quality assurance panel to recommend specific changes in the Department's

oversight activities. The panel will include representatives from the Washington State Residential Care Council, adult family homes united, the Department and its field staff, Disability Rights of Washington, and members of the community. The Department must provide data on previous inspection, complaint investigation, and enforcement actions, as negotiated between the panel and the Department. The panel will make recommendations on specific changes on adult family oversight activities and report to the Governor and the Legislature by July 1, 2012.

Beginning July 1, 2011, the per bed license fee for nursing homes, boarding homes, and adult family homes must be established in the Omnibus Appropriations Act. The amount of the fee may not exceed the Department's annual licensing and oversight activity costs and must include the Department's cost of paying providers for the amount of the licensing fee attributed to Medicaid clients.

In addition, a \$2,750 initial processing fee for new adult family home licenses is required.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): Specifies that the adult family home annual license is specified in the omnibus appropriations act. Changes the amount of the initial license from \$2,000 with a \$500 rebate to \$2,750 with no rebate.

Imposes new restrictions and requires certain disclosure of the handling of resident funds for adult family homes. The substitute bill required this of all long-term care facilities.

EFFECT OF CHANGES MADE BY HEALTH & LONG-TERM CARE COMMITTEE (Recommended First Substitute):

1. It is clarified that legally married couples or state registered domestic partners may not apply for separate licenses and may apply jointly as co-providers if they are both qualified.
2. Providers may operate another business in their home.
3. A licensed operator must wait 24 months before applying for another license. The Department won't accept another license application from a provider for 24 months following any enforcement action has been taken against a current license.
4. In the event of serious noncompliance with state, federal or local laws, the Department is authorized to take one or more actions against any home or homes operated by a provider.
5. If an operator of multiple homes has a serious noncompliance, the Department must inspect the other homes of the provider and the cost may be imposed on the provider at up to \$300 per inspection.
6. In order to qualify for a license, any applicant must have completed 1000 hours of direct care given in the previous 36 months. Applicants must prove financial solvency as defined in rule.
7. All future homes must provide residents with sufficient space to accommodate all residents at one time in the dining and living areas, have hallways wide enough for mobility aids, and safe outdoor areas accessible for residents to use.
8. All homes must provide access to common areas to the extent they are safe under the residents' care plans.

9. The provider or resident manager must assure there is a mechanism to communicate with the resident in his or her primary language either through a qualified person on site or readily available at all times, and have staff on site at all times capable of understanding and speaking English well enough to respond appropriately to emergency situations and understand resident care plans.
10. A provider, resident manager or qualified staff person must be present at the adult family home a minimum of eight hours a day.
11. A separate account is established in the custody of the State Treasurer to receive monies from civil penalties imposed under this chapter. The Department must use the money to improve the quality and care of residents in adult family homes.
12. The Department will specify in rule how the sanctions may be applied. Criteria for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to health, safety, or welfare to residents. Prompt and specific enforcement remedies must be implemented without delay for providers who have shown deficiencies stated above.
13. Resident deposit's amounting to \$100 or more paid to a long-term care facility must be placed in an interest-bearing account that is separate from any of the facility's operating accounts. The resident must be notified of the location of these deposited funds. Residents must be given full disclosure about what deposits or other prepaid charges cover, and the terms for retaining any of these charges should the resident die, be transferred, or discharged. Any money related to fees, charge, or deposits due to residents must be refunded within 30 days of the resident leaving the facility, including refunds owed from payment to a placement entity.
14. After a change of ownership, any funds in residents' accounts will be transferred to a new account by the new licensee or owner. Deceptive disclosures and unfair retention of deposits or prepaid charges by facilities will be construed as an unfair or deceptive act under the state's Consumer Protection Act.
15. The Department is directed to use additional licensor resources to meet statutory requirements and address complaints in adult family homes, boarding homes, nursing facilities, and on behalf of vulnerable adults identified elsewhere in statute.
16. Subject to funding, the Long-Term Care Ombudsman is directed to convene the adult family home quality assurance panel to recommend specific changes in the Department's oversight activities. The panel will include representatives from the Washington State Residential Care Council, Adult Family Homes United, the Department management and its field staff, Disability Rights of Washington, and members of the community. The Department must provide data on previous inspection, complaint investigation, enforcement actions, as negotiated between the panel and Department. The panel must make recommendations on specific changes on adult family home oversight activities including steps to decrease minor infractions, increase sanctions for serious violations, improve responsiveness to consumers, provide more timely response to complaints. The panel will report to the Governor and the Legislature by July 1, 2012.
17. Current annual licensing fees for adult family homes are increased to \$250 per home, per year. The initial processing fee is increased to \$2,000 for new licenses.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2011.

Staff Summary of Public Testimony on Original Bill (Health & Long-Term Care): PRO: The adult family home industry has grown faster than the state's ability to provide adequate oversight. Complaints about care have increased, and state inspectors are being used to do more and more investigations. We need to be able to deny new licenses when we know there are problems but don't have enough statutory authority to deny an applicant. We need these statutory changes to strengthen oversight of adult family homes. We need appropriate use fees and sustainable funding for oversight and we need additional investigators on the ground, especially in adult family homes. The state needs to respond faster to complaints. These measures will support quicker responses and more thorough inspections and investigations.

CON: These measures won't do anything to improve resident care and safety. Better access to more training for caregivers is more likely to help. Why penalize the whole industry, when the problems are occurring in very few homes. Adult family homes are an essential part of the long-term care system in the state, these fee increases will cripple us. We save the state hundreds of thousands of dollars because we are paid so much less than nursing homes while caring for the same kind of long-term care client. We don't need to pay for more inspectors. They seem to have plenty of time to pick on unimportant things now. Our industry doesn't want bad players.

OTHER: This bill is focused on adult family homes. We don't understand why boarding homes are included in some of the references.

Persons Testifying (Health & Long-Term Care): PRO: MaryAnne Lindeblad, Aging and Disability Services; Louise Ryan, State Long-Term Care Ombudsman; Jeff Crollard, Attorney for Long-Term Care Ombudsman; David Lord, Disability Rights WA; Ann Detlers, Lutheran Advocacy; Cheri Rudolph, self.

CON: Cindi Laws, Hope Reffett, Dorothy Schlimme, Bonnie Brie, Don Olson, Craig Fredrickson, Delbert Miles, WA State Residents Care Council; Dan Powell, owner.

OTHER: Julie Peterson, Aging Services of WA.

Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means): PRO: This bill is needed to address the care issues within adult family homes. This bill comes from a collaborative working group. The substitute bill doesn't go far enough in having license fees that fully cover the cost of the program. It is important that the department have the tools necessary to provide adequate inspection and enforcement of adult family homes.

CON: The Medicaid reimbursement rate is not sufficient. This bill targets adult family homes and these homes provide a much needed service to the state. Increasing license fees without providing a better reimbursement rate will drive many homes out of business.

Persons Testifying (Ways & Means): PRO: Louise Ryan, Long-Term Care Ombudsman; MaryAnne Lindeblad, Aging and Disability Services Administration; David Lord, Disability Rights WA; Barbara Mach, New Hope Outreach; Bonnie Bruce, WA State Rehabilitation Care Council; Joyce LaValle, American Assn. of Retired Persons; Delbert Miles, Miles Adult Family Homes.

CON: Amy Thomas, Adult Family Homes United.